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JOINT STANDING COMMITTEE ON VETERANS AND LEGAL AFFAIRS

LD 1463 "An Act To Create an Automatic Voter Registration System"
Testimony Provided by Julie L. Flynn, Deputy Secretary of State, April 24, 2019

Senator Luchini, Representative Schneck and Members of the Committee:

This legislation proposes to implement a new process in Maine known as Automatic Voter Registration (AVR) in other states. We are testifying "neither for nor against" the bill because although we are in favor of implementing a form of AVR, we have some concerns with this bill as drafted.

The Secretary of State has proposed agency legislation this session in the form of a Resolve, currently designated as LR 2287, which has not yet been drafted by the Revisor. Our proposal directs the Secretary of State to report to this Committee no later than February 1, 2020, with a plan for implementing AVR in Maine. We have been following the implementation of AVR over the past few years. However, we have not been in a position to consider implementation previously due to the implementation of the Real ID Act by Maine's Bureau of Motor Vehicles (BMV). Staff of the BMV is working under federal deadlines to fully implement the Real ID Act this year, so we would not be able to begin discussions on AVR implementation with the BMV and the Secretary of State Information Services staff until after Real ID implementation is complete.

LD 1463 describes AVR as if it were a new "system" of voter registration, when in reality it is simply the automation of the current paper-based process implemented in 1995 to comply with federal law, the National Voter Registration Act of 1993 (NVRA). The NVRA required every state to designate as voter registration agencies its motor vehicle authority (in Maine, the BMV) as well as all offices in the state that provide public assistance and all offices in the state that provide state-funded programs primarily engaged in providing services to persons with disabilities. These designated voter registration agencies must offer their clients/customers the opportunity to register to vote, or to decline to register, at the same time they are completing their agency transactions (e.g., applying for assistance, obtaining a driver's license, etc.). Since January 1, 1995, each office of the BMV plus the designated assistance agencies have had customers complete and sign a paper application and have forwarded these applications through state inter-office mail to the Division of Elections on a weekly basis. Our staff, in turn, sorts the applications according to the municipality of registration and then mails them to the applicable municipalities. This has become a very labor-intensive and inefficient process, both for our office and for the municipalities.

AVR does not create a new system of voter registration, in that it does not change the eligibility requirements or the required information necessary to complete a voter registration transaction. Instead, it provides a more automated process for collecting and transmitting the voter registration data electronically directly to the municipal registrars, rather than via a paper application. In its simplest form, AVR is a process for collection of the data that is common to both the source agency transaction and the voter registration transaction by data entry into an electronic form at the source agency; for offering the voter the opportunity to complete the registration or decline to register at the point of the transaction (i.e., to "opt out" as described in this bill), for verification of the applicant's citizenship and residence status at the source agency (which they already have to do for the agency transaction), and for transmission of the voter registration application data for eligible voters from the source agency system to the Central Voter Registration (CVR) system for review and acceptance by the appropriate municipality.

As we conceive it, the AVR legislation could be simplified and first implemented at the BMV before enhancing it to include other source agencies. In fact, many of the states that have implemented AVR have done so with minimal or no changes to their laws or rules. Nevertheless, we think the current bill could be used as a vehicle to implement AVR and we would welcome the opportunity to work with the Committee to simplify and adapt it to fit Maine's current voter registration process and framework.

The current date for implementation in this bill is January 1, 2022, which should be sufficient for implementing the process at the BMV. However, we respectfully ask the Committee to remove the requirements for implementation at other source agencies by January 1, 2022, by striking lines 16 - 22 on page 4 of the bill, but leaving the determination of expansion of AVR to other source agencies solely up to the Secretary of State as is already provided for on lines 7 – 15 of page 4 of the bill. In addition to the determination that a source agency collects documents that provide proof of voter eligibility, the Secretary of State needs to be sure that the source agency has compatible data formats for names, addresses and other required voter registration data, and that we can design a method of securely transmitting this common data from the source agency to the applicable municipal registrar through the CVR.

I have provided the Committee with a copy of the first part of the recently released report by the Brennan Center for Justice entitled "AVR Impact on State Voter Registration". The full report is available at: http://www.brennancenter.org/. Pages 4 and 5 of the report summarize the AVR policy implementation by the 15 states plus the District of Columbia that either have implemented AVR or that are in the process of implementation. The report concludes that AVR increased the number of registrations by a statistically significant degree in the jurisdictions they studied. We believe Maine would see a similar increase, while at the same time freeing up valuable staff time at the Division of Elections and at the municipalities from manual handling of the paper transactions.

Most of the jurisdictions initially have implemented AVR at the (Department) of Motor Vehicles only, and then have authorized the Secretary of State or the Board of Elections to later determine whether to expand implementation to social service agencies or other source agencies that are deemed to collect the information necessary to determine eligibility for voter registration. As we previously stated, we request that this bill be amended to do the same. Data integrity and the security of the data transmission system between the agencies and the CVR is very important and it is not feasible to do this all at one time.

An additional benefit of AVR is that it actively provides the applicant the opportunity to "opt out" of having their information collected at the BMV or other source agencies to be used for voter registration purposes, rather than having to "opt in" to completing a voter registration form. Most of the states and DC place the opportunity to opt out from AVR at the "front end" or the "point-of-service" part of the transaction, and that is the recommended method by Brennan Center, since they find no evidence that having the "opt out" on the back end of the transaction results in higher registration rates than having it on the front end.

This bill contains the opt out language on the "front end" of the transaction on lines 27 – 35 of page 4 of the bill, but then creates an additional "back end" opt-out notifications on page 5, lines 11 – 16 and 30 – 41 and page 6, lines 1 – 9. We believe that the additional back end opt out process is unnecessary, as it results in all registrations being put into a 21-day pending status until an "election official shall provide information to the individual" and "provide a process by which the individual may enroll in a party or may decline being a registered voter" (i.e., opt out). The bill does not specify the election official who must provide the information or how they will provide it, but it suggests to us that the municipal registrars would have to mail a paper notice to the voters, so that they could obtain a signature on the enrollment choice or the opt out choice form, which would have to be returned to the municipal registrar within 21 days or the applicant would be automatically registered. This will create more work for municipal registrars, add mailing costs, and will result in a delay in registration of 21 days for all voters. Accordingly, we would ask the Committee to strike the back end opt-out notification provisions. As an alternative fail-safe procedure, the Secretary of State could post an "opt out" form on the elections website, to allow a person to opt out of automatic registration at any time.

In Section 4 of the bill (page 2, line 22), the age for conditional registration is proposed to be lowered from age 17 to age 16. We support this proposal, as studies have shown that engaging voters at a younger age helps to build life-long voting patterns. However, this section of the bill does not appear to have a delayed effective date. We will need to engage our CVR vendor to make a code change to effect this legal change, which they have done for other states that use their software. However, we ask that you assign a delayed effective date of January 1, 2020 to this section of the bill to give us time to make the necessary program changes.

In Section 5 of the bill, new reporting requirements for AVR are being added for the annual report to the Legislature on the CVR beginning with the report due on January 15, 2022. We would ask that you strike this section of the bill. The Legislature can always amend the reporting requirements in a future session once the parameters of AVR implementation are known.

In Section 6 of the bill, we ask that you eliminate the proposed section 234 (Privacy and security standards) and section 236 (Protections against misuse of information). We have not had time to fully study these provisions, but believe they may conflict with other laws or rules that govern data use and security standards for the BMV and CVR data. This is always something the Secretary of State can adopt by rule once the implementation process is fully developed.

We are appreciative of being given the rulemaking authority for AVR implementation in Section 238 (Rules) of the proposed laws. However, we would ask that you designate the rules as routine technical rather than major substantive rules. To the extent that we need to draft any rules, we believe they will be procedural and technical in nature and do not need to have a further review by the Legislature. I would note that this section is permissive but not proscriptive of rulemaking by stating we "may" adopt rules. This conflicts with the unallocated language in Section 7 of the bill, on page 9, lines 6 – 10, which mandates the Secretary of State to adopt major substantive rules by January 1, 2022 after presenting them to the Legislature for approval by January 15, 2020. Accordingly, we ask that you remove this unallocated language requiring major substantive rulemaking.

I will be happy to answer any questions you may have, either now or at the work session.

AVR Impact on State Voter Registration

New Brennan Center Report Finds Significant Gains in Voter Rolls

by Kevin Morris and Peter Dunphy

Executive Summary

Over the past five years, a significant reform of voter registration has been enacted and implemented across the country. Automatic voter registration or AVR offers the chance to modernize our election infrastructure so that many more citizens are accurately registered to vote.[1]

AVR features two seemingly small but transformative changes to how people register to vote:

1. Citizens who interact with government agencies like the Department of Motor Vehicles are registered to vote, unless they decline. In other words, a person is registered unless they opt out, instead of being required to opt in.

2. The information citizens provide as part of their application for government services is electronically transmitted to elections officials, who verify their eligibility to vote. This process is seamless and secure.

In the past five years, 15 states and the District of Columbia have adopted AVR.[2] (Three states — Connecticut, Utah, and New Mexico — have adopted something very close to automatic registration.)[3]

How has automatic registration worked? Has it, in fact, increased registration rates as its proponents had hoped? This report is the first comprehensive analysis of the impact of

AVR on voter registration rates. In the past, individual states have reported increases in voter registration since the adoption of automatic voter registration. But that could be due to many factors, such as compelling candidates or demographic change. Previous analyses have not spoken as to cause and effect or examined the impact of different approaches to AVR.

Is it possible to isolate the impact of automatic registration itself? This multistate analysis leverages low-level voter file data from around the country and cutting-edge statistical tools to present estimates of automatic voter registration's impact on registration numbers.

This report finds:

- AVR markedly increases the number of voters being registered — increases in the number of registrants ranging from 9 to 94 percent.

- These registration increases are found in big and small states, as well as states with different partisan makeups.

These gains are found across different versions of the reform. For example, voters must be given the opportunity to opt out (among other things, to protect ineligible people from accidentally being registered). Nearly all of the states with AVR give that option at the point of contact with govern-

ment agencies; two ask for opt-outs later in the process. The increase in registration rates is similarly high whichever version of the policy is adopted.

How did we do this study? We were able to isolate the effect of AVR using a common political science method known as "matching." We ran an algorithm to match areas that implemented AVR with demographically similar jurisdictions that did not. Matching similar jurisdictions allowed us to build a baseline figure of what a state's registration rate would have looked like had it not implemented AVR. By aggregating and comparing baseline jurisdictions to AVR jurisdictions, we demonstrated that AVR significantly boosted the number of people being registered everywhere it was implemented.

Our nation is stronger when more people participate in the political process. This report shows that AVR is a highly effective way to bring more people into our democracy.

Jurisdiction*	% Increase in Registrations
Oregon	15.9%
Georgia	93.7%
Vermont	60.2%
Colorado	16.0%
Alaska	33.7%
California	26.8%
Rhode Island	47.4%
Washington, DC	9.4%

*In order of implementation date

Introduction

Automatic voter registration (AVR) is an innovative policy that stream-lines the way Americans register to vote through two simple tweaks to the traditional method of registering voters:

1. Eligible citizens are automatically registered to vote when they interact with designated government agencies, unless those individuals affirmatively decline. This switch to an "opt-out" system is a subtle but impactful change from the status quo "opt-in" method, which requires eligible citizens to take an affirmative step to register to vote.

2. These government agencies will electronically transfer voter registration information to election officials, avoiding paper registration forms. This saves paper costs and ensures that voter rolls are kept up-to-date.

As of March 2019, 15 states and the District of Columbia have enacted AVR. This is remarkable given that the first state to adopt AVR, Oregon, passed the reform just four years ago, in March 2015.[4]

Previous research has found that states that implemented AVR have seen registration rates rise. However, this research has often failed to establish a causal relationship — that AVR, absent other factors, was responsible for the rise in registrations.[5]

This new report by the Brennan Center for Justice seeks to prove just that. This study examines the seven AVR states (and Washington, DC) that have been operating the program long enough for meaningful results to be available. By using a common political science method known as "matching," we can quantify both the impact and statistical significance of the implementation of AVR in a state. The report concludes that in every jurisdiction that implemented AVR, the policy boosted the number of registrations by a statistically significant degree.

In the following pages, we explain some of the key variations of state AVR policies, detail state factors that could affect the size of the impact of AVR on registrations, lay out our methodology, then provide a state-by-state profile that quantifies and visualizes that impact of AVR. The technical appendix that follows provides a more detailed explanation of the methodology and econometric results.

Variations in AVR

No two AVR systems are exactly the same. Factors including a state's primary system, criminal disenfranchisement law, and technological environment are relevant to the state's AVR design.

For instance: Sixteen states have either closed or partially closed primaries, which makes party registration an important part of the voter registration process.[6] In AVR systems that register voters unless they decline via a mailer (also known as a "back-end" opt-out), voters must return a postcard to indicate the party with which they wish to register. This extra step is often not taken by voters. In Oregon, for example, only 14.5 percent of people registered through AVR in 2018 returned the mailer to select a party. As a result, close to 85 percent of new voters registered through AVR were automatically marked as nonaffiliated, an outcome that would matter greatly in some states and hardly at all in others.[7]

As observable from the chart below, AVR *usually*: is adopted legislatively, is implemented only at the state Department of Motor Vehicles (DMV), and places the opportunity to opt out during the transaction (sometimes called a "point-of-service" or "front-end" opt-out). However, variation exists. For example, Alaska links AVR to the annual check that gets mailed to more than 90 percent of residents who register for the state's Permanent Fund Dividend derived from oil revenues.[8] Georgia and Colorado adopted AVR administratively, meaning it was done without implementing legislation.[9] Oregon provides the opt-out opportunity through the mail — anyone who doesn't respond to a mailing within 21 days gets registered (sometimes called a "back-end" opt-out).[10] Six of the states that have passed AVR either extend automatic registration beyond the DMV or give secretaries of state the power to do so if they believe another agency has the resource capabilities to implement AVR.[11]

There are a few factors that influence the extent to which the introduction of AVR affects the rate of voter registration:

1. **Pre-AVR Rate of Registration.** AVR will likely have a greater impact when introduced in a state in which a smaller proportion of eligible citizens are already registered to vote, as compared with a state in which a higher proportion are already registered. Even in states with high registration rates, AVR is still a valuable reform because

AVR Policy by Jurisdiction

State	Approval Date	Implementation Status	Covered Agencies	Declination Type
Alaska	November 2016: Ballot Measure 1 approved by voters	Implemented March 1, 2017	Permanent Fund Dividend Division	Back-end (post-transaction mailer)
California	October 2015: AB 1461 signed into law	Implemented April 23, 2018	DMV	Front-end (point-of-service)
Colorado	2017: Approved administratively	Tested at certain locations February 2017, subsequently implemented statewide	DMV	Front-end (point-of-service)
DC	December 2016: B21-0194 signed into law	Implemented June 26, 2018	DMV	Front-end (point-of-service)
Georgia	2016: AVR approved administratively	Implemented September 1, 2016	DMV	Front-end (point-of-service)
Illinois	August 2017: SB 1933 signed into law	Statutory implementation deadline of July 2018	DMV, plus social service agencies that the State Board of Elections determines to have reliable personal information for voter registration	Front-end (point-of-service)
Maryland	April 2018: SB 1048 enacted without governor's signature	Statutory implementation deadline of July 2019	DMV, Maryland Health Benefit Exchange, local departments of social services, and the Mobility Certification Office	Front-end (point-of-service)

State (cont'd)	Approval Date	Implementation Status	Covered Agencies	Declination Type
Massachusetts	August 2018: H 4671 signed into law	Statutory implementation deadline of January 2020	DMV and MassHealth, plus social service agencies verified by the secretary of state to collect the information necessary to determine eligibility for voter registration	Back-end (post-transaction mailer)
Michigan	November 2018: Proposal 3 approved by voters	Implementing legislation has not yet been passed	Implementing legislation has not yet been passed	Implementing legislation has not yet been passed
Nevada	November 2018: Ballot Question 5 approved by voters	No specific statutory deadline set	DMV	Front-end (point-of-service)
New Jersey	April 2018: AB 2014 signed into law	Implemented November 2018	DMV, plus social service agencies verified by the secretary of state to collect the information necessary to determine eligibility for voter registration	Front-end (point-of-service)
Oregon	March 2015: HB 2177 signed into law	Implemented January 1, 2016	DMV	Back-end (post-transaction mailer)
Rhode Island	July 2017: HB 5702 signed into law	Implemented June 11, 2018	DMV, plus social service agencies verified by the secretary of state to collect the information necessary to determine eligibility for voter registration	Front-end (point-of-service)
Vermont	April 2016: HB 458 signed into law	Implemented January 1, 2017	DMV	Front-end (point-of-service)
Washington	March 2018: HB 2595 signed into law	Statutory implementation deadline of July 2019	DMV, plus social service agencies verified by the secretary of state to collect the information necessary to determine eligibility for voter registration	Front-end (point-of-service)
West Virginia	April 2016: HB 4013 signed into law	Statutory implementation deadline of July 2019	DMV	Front-end (point-of-service)

it makes election administration more effective and helps capture much of the remaining unregistered population.[12]

2. **Rate of Registration at Implementing Agency Prior to AVR.** A state where most eligible persons visiting the AVR agency have already opted in to registration will see fewer additional people registered via AVR than a state with more "slippage," i.e., persons who are eligible to register but leave the agency without having registered. In the same vein, a state that exempts some portion of its agency transactions from AVR is expected to yield fewer registrants than a state that utilizes AVR in most transactions.

3. **Percentage of State Driver's License Holders.** Except for Alaska, all the states included in this study have implemented AVR at the DMV.[13] In the future, some states plan to extend AVR to other public agencies beyond the motor vehicle agency.[14] States with low car ownership rates, and

consequently fewer driver's license holders, should expect to register fewer individuals with AVR if solely implemented at the DMV. Said states have strong incentives, therefore, to implement AVR at agencies beyond the DMV to expand the potential impact of the program.

4. **Noncitizen Population.** Every state in the country allows noncitizens to get driver's licenses.[15] Twelve states and the District of Columbia even grant legal permission to persons who are in the country without documentation to obtain driver's licenses,[16] but only citizens can lawfully participate in federal elections. Noncitizens who register to vote, even if they are lawfully present in the United States and even if they do so accidentally, can face serious legal consequences. As such, we want noncitizens to opt out. Accordingly, states with higher rates of noncitizens obtaining driver's licenses may expect a higher opt-out rate than states with few noncitizens. Each state should design

its AVR process to minimize the risk that noncitizens inadvertently register to vote.

There are other factors that influence the number of people who will be registered through AVR. For instance, 34 states disenfranchise citizens living in the community with felony convictions.[17] Although these disenfranchised individuals can get driver's licenses, they are prohibited from registering to vote and therefore should opt out of AVR. Similarly, domestic violence survivors often opt out of registering to vote because voter rolls are publicly available throughout the country.[18] Note, however, that although the presence of disenfranchised citizens and citizens with concerns about their information being publicly available will influence the number of people opting out of registrations, these populations are likely too small to have a statistically meaningful impact on estimates of AVR's effect.

Statewide Results and Methodology

In the following pages, we assess the impact of automatic voter registration on a state-by-state basis. The information for each state includes a profile of the demographic makeup of the state, a brief discussion of the methodology and any data limitations, and the reported results.

The analysis in this report rests on matching census tracts in states that implemented AVR to tracts in those that did not. We then compare the difference in registration counts between these two groups to estimate the impact of AVR. This is commonly referred to in statistics as a "matched difference-in-differences" model. Here's how these two processes work:

Matching
Myriad factors affect the rise and fall of registration rates in states over time. The purpose of this report is to isolate a single factor in this mix: the implementation of AVR. The abundance of factors impacting registration rates poses significant methodological challenges because we cannot know exactly what would have happened in the states that implemented AVR had they not done so. Accordingly, we must devise a statistical model to estimate how many individuals would have been registered in a state if the state had not implemented AVR. We compare how many voters were actually registered with this estimation of what would have happened without AVR to determine the impact of the policy.

Here's a basic rundown of how our matching works. We started by calculating the number of weekly registrations in every census tract in each state whose voter file we had access to. This includes every state that implemented AVR prior to the 2018 midterms as well as nine others.[19] For each of these census tracts, we also find various demographic information that is related to the number of people registering to vote.[20] Some of these criteria include: voting-age population; growth

rate of voting-age population; education; nonwhite and non-citizen population; median income and unemployment; and number of registrations in 2013.[21]

Every "treated" census tract (census tracts in states where AVR was implemented) was then matched to the three[22] census tracts most similar to it among our pool of "untreated" census tracts (tracts in states where AVR has not yet been implemented). To determine which census tracts were most similar to one another, we used the genetic match developed by political scientist Jasjeet Sekhon.[23] Sekhon's matching algorithm is a common and widely accepted methodology for assessing policy impact. In the past decade, many studies in peer-reviewed academic journals have based their methodology on this matching technique.[24]

We then compared the growth in registrations in AVR census tracts and the control census tracts to determine whether the number of voters being registered increased more in places where AVR was introduced.

Modeling
To determine whether registration rates in treated tracts exceeded rates in control tracts, we run a simple difference-in-differences model. The periods of analysis are state-specific and based on when a state implemented AVR. In every case, we compare the growth in registrations from the pre-period (before each state's AVR implementation date) to the post-period (after the implementation date) in the control tracts with the growth in the treated tracts. If the average number of weekly registrations grew by five in the control tracts and by seven in the treated tracts, for instance, we would attribute the difference — two registrations per week — to automatic voter registration.

For the five states that implemented AVR in 2016 and 2017, we generally limit our analysis to the first 35 weeks of 2013 and 2017. In other words, we compare the growth in registrations in treated tracts from the first 35 weeks of 2013 and the first 35 weeks of 2017 with the growth in the same period in the control tracts. We compare 2013 (our pre-period) to 2017 (our post-period) because they are at the same position within the four-year presidential election cycle. We choose the odd years to decrease the interference from election-year registration spikes that could bias our results. Although we do not include 2015 in our econometric estimates, we show the control and treated tracts in 2015 in the charts in the pages that follow. We include these to demonstrate that the growth rate in registrations in treated and untreated census tracts was roughly the same from 2013 to 2015 (just as we would expect, because AVR had not yet gone into effect) and that AVR census tracts began to grow more quickly only after AVR was implemented.

We limit our period of analysis to the first 35 weeks of each year because some of the control tracts had local elections in

the fall of 2017. As these elections approached, get-out-the-vote drives may have registered many people. Registration surges from these drives have nothing to do with AVR. Therefore, we did not include periods in which registration drives were likely to impact registration rates in either treated or control tracts.

Similarly, registration surges prior to the 2018 midterm elections have the potential to distort our results in states that implemented AVR in 2018. To avoid this potential problem, we end our 2018 analyses in August 2018. In each of these models, we use nine months of data (December 2017 to August 2018), and compare the pre-implementation portion of the period with the post-implementation portion of the period in the control and treated census tracts.

For a more in-depth discussion of our matching and econometric results, please see the Technical Appendix.